



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Capricorn Communications Engineering, Inc.

File: B-223627

Date: August 4, 1986

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### DIGEST

1. A protest not filed within 10 working days after the protester knew or should have known of the basis for protest is untimely and will not be considered.
2. Oral notification of basis for protest is sufficient to start 10-day period for filing protest running and protester may not delay filing of protest until receipt of written notification of protest basis.

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### DECISION

Capricorn Communications Engineering, Inc. (CCE) protests the rejection of its bid under invitation for bids No. F34608-86-B-0015 for protector blocks, issued by the Department of the Air Force (Air Force). CCE specifically maintains that it was improper for the Air Force to reject its bid solely on the ground that the CCE bid included reconditioned and surplus materials.

We dismiss the protest as untimely.

According to the protester, bids were opened on April 3, 1986. CCE states that it called the contracting officer on June 3, 1986, and was told that the bid deadline had been extended to July 7, 1986. At this time, the contracting officer also informed CCE that CCE's bid would not receive further consideration for award because CCE had included reconditioned and surplus materials in its original bid. CCE sought to confirm this conversation with the contracting officer prior to filing of a protest, but their written inquiry was not answered. Subsequently, on July 3, 1986, CCE received written notice stating that the bid award had been made and that its bid had been rejected because of its failure to provide new, as opposed to reconditioned, materials. CCE filed a protest with this Office on July 14, 1986.

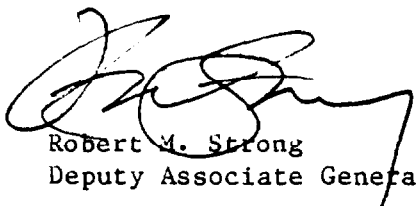
Our Bid Protest Regulations, require that bid protests be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1986). As indicated

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above, CCE was informed by the Air Force on June 3, 1986, that their bid was unacceptable because it included reconditioned and surplus materials, and also that the agency was permitting the other bidders to extend their bids while excluding CCE's bid from further consideration. Therefore, since June 3, 1986, was the date upon which they knew or should have known of the basis for protest, CCE's failure to file a protest with this Office within 10 working days, or by June 17, 1986, renders its protest, dated July 14, 1986, untimely.

While we recognize that CCE sought to obtain written confirmation of the June 3, 1986, conversation prior to filing its protest, CCE could not extend their 10-day filing limitation while awaiting written confirmation of an oral notification which had already established the basis for protest. Koenig Mechanical Contractors, Inc., B-217571, Apr. 4, 1985, 85-1 C.P.D. ¶ 389. Prior General Accounting Office decisions have recognized that oral notification of the basis for protest is sufficient to start the 10-day period for filing a protest running and a protester may not delay filing its protest until receipt of written notification of the protest basis which merely reiterates the basis of protest. Koenig Mechanical Contractors, Inc., B-217571, supra.

Since CCE's protest was not received in our Office within 10 working days after the oral notification, the protest is untimely and will not be considered.



Robert M. Strong  
Deputy Associate General Counsel